

AMENDED IN ASSEMBLY FEBRUARY 17, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1604

Introduced by Assembly Member Nava
(Coauthors: Assembly Members Ammiano, *Blumenfield*, Chesbro,
***Hill*, Huffman, Jones, Monning, ~~and~~ Salas, *Saldana*, and**
***Torlakson*)**

January 5, 2010

An act to add Part 21 (commencing with Section 42001) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1604, as amended, Nava. Taxation: Oil Industry Fair Share Act.

Existing law imposes various taxes, including taxes on the privilege of engaging in certain activities. The Fee Collection Procedures Law, the violation of which is a crime, provides procedures for the collection of certain fees and surcharges.

This bill would impose a tax on and after January 1, 2011, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided, at the rate of 10% of the gross value of each barrel of oil severed. The tax would be administered by the ~~Department of Conservation~~ *State Board of Equalization* and would be collected pursuant to the procedures set forth in the Fee Collection Procedures Law. The bill would require the ~~department~~ *board* to deposit all revenues collected pursuant to these provisions into the General Fund.

Because this bill would expand the scope of the Fee Collection Procedures Law, the violation of which is a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Part 21 (commencing with Section 42001) is
2 added to Division 2 of the Revenue and Taxation Code, to read:

3

4 PART 21. OIL INDUSTRY FAIR SHARE ACT

5

6 42001. This part shall be known and may be cited as the Oil
7 Industry Fair Share Act.

8 42002. For purposes of this part, the following definitions shall
9 apply:

10 (a) "Barrel of oil" means 42 United States gallons of 231 cubic
11 inches per gallon computed at a temperature of 60 degrees
12 Fahrenheit.

13 ~~(b) "Department" means the Department of Conservation.~~

14 (b) "Board" means the State Board of Equalization.

15 (c) "Gross value" means the sale price at the mouth of the well
16 in the case of oil, including any bonus, premium, or other thing of
17 value paid for the oil. If there is no sale at the time of severance,
18 "gross value" means the sale price when the oil is sold, including
19 any bonus, premium, or other thing of value paid for the oil. If oil
20 is exchanged for something other than cash, or if the relation
21 between the buyer and the seller is such that the consideration
22 paid, if any, is not indicative of the true value or market price, then

1 the ~~department~~ *board* shall determine the value of the oil subject
2 to the tax based on the cash price paid to producers for like quality
3 oil in the vicinity of the well.

4 (d) "Oil" means petroleum, or other crude oil, condensate, casing
5 head gasoline, or other mineral oil that is mined, produced, or
6 withdrawn from below the surface of the soil or water in this state.

7 (e) "Producer" means any person or entity that takes oil from
8 the earth or water in this state in any manner; any person that owns,
9 controls, manages, or leases any oil well in the earth or water of
10 this state; any person that produces or extracts in any manner any
11 oil by taking it from the earth or water in this state; any person
12 that acquires the severed oil from a person or agency exempt from
13 property taxation under the United States Constitution or other
14 laws of the United States or under the California Constitution or
15 other laws of the State of California; and any person that owns an
16 interest, including a royalty interest, in oil or its value, whether
17 the oil is produced by the person owning the interest or by another
18 on the person's behalf by lease, contract, or other arrangement.

19 (f) "Production" means the total gross amount of oil produced,
20 including the gross amount attributable to a royalty or other
21 interest.

22 (g) "Severed" or "severing" means the extraction or withdrawing
23 from below the surface of the earth or water of any oil, regardless
24 of whether the extraction or withdrawal shall be by natural flow,
25 mechanical flow, forced flow, pumping, or any other means
26 employed to get the oil from below the surface of the earth or
27 water, and shall include the extraction or withdrawal by any means
28 whatsoever of oil upon which the tax has not been paid, from any
29 surface reservoir, natural or artificial, or from a water surface.

30 (h) "Stripper well" means a well that has been certified by the
31 ~~department~~ *board* as an oil well incapable of producing an average
32 of more than 10 barrels of oil per day during the entire taxable
33 month. Once a well has been certified as a stripper well, that
34 stripper well shall remain certified as a stripper well until the well
35 produces an average of more than 10 barrels of oil per day during
36 an entire taxable month.

37 42003. On and after January 1, 2011, for the privilege of
38 severing oil from the earth or water in this state for sale, transport,
39 consumption, storage, profit, or use, a tax is hereby imposed upon
40 all producers at the rate of 10 percent of the gross value of each

1 barrel of oil severed. The tax shall be applied equally to all portions
2 of the gross value of each barrel of oil severed.

3 42004. Except as otherwise provided in this part, the tax shall
4 be upon the entire production in this state, regardless of the place
5 of sale or to whom sold or by whom used, or the fact that the
6 delivery may be made to points outside the state.

7 42005. The tax imposed by this part shall be in addition to any
8 ad valorem taxes imposed by the state, or any of its political
9 subdivisions, or any local business license taxes that may be
10 incurred as a privilege of severing oil from the earth or water or
11 doing business in that locality. There shall be no exemption from
12 the payment of an ad valorem tax related to equipment, material,
13 or property by reason of the payment of the gross severance tax
14 pursuant to this part.

15 42006. (a) The tax imposed by this part shall not be passed
16 through to consumers by way of higher prices for oil, natural gas,
17 gasoline, diesel, or other oil or gas consumable byproducts, such
18 as propane and heating oil. ~~The department~~ *board* may monitor
19 and investigate any instance where producers or purchasers of the
20 oil or gas have attempted to gouge consumers by using the tax as
21 a pretext to materially raise the price of oil, natural gas, gasoline,
22 diesel, or other oil or gas consumable byproducts, such as propane
23 and heating oil.

24 (b) *This section applies when not superceded by federal law.*

25 42007. Two or more producers that are corporations and are
26 owned or controlled directly or indirectly, as defined in Section
27 25105, by the same interests shall be considered as a single
28 producer for purposes of application of the tax prescribed in this
29 part.

30 42008. (a) There shall be exempted from the imposition of
31 the tax imposed pursuant to this part oil produced by a stripper
32 well in which the average value of oil as of January 1 of the prior
33 year is less than thirty dollars (\$30) per barrel.

34 (b) For oil produced in this state from a well that qualifies under
35 Section 3251 of the Public Resources Code or which has been
36 inactive for a period of at least the preceding five consecutive
37 years, the imposition of the tax imposed pursuant to this part shall
38 be reduced to zero for a period of 10 years.

39 (c) There shall be exempted from the imposition of the tax
40 imposed pursuant to this part all oil owned or produced by the

1 state and any political subdivision's (including any local public
2 entity (as defined by Section 900.4 of the Government Code))
3 proprietary share of oil produced under any unit, cooperative, or
4 other pooling agreement.

5 42009. The tax imposed by this part is due and payable to the
6 ~~department~~ *board* quarterly on or before the last day of the month
7 next succeeding each calendar quarter.

8 42010. (a) Any person that fails to pay any tax within the time
9 required shall pay, in addition to the amount of tax owed, interest
10 at the rate of 1 ½ percent per month, or fraction thereof, from the
11 date on which the tax became due and payable to and including
12 the date of payment.

13 (b) Every payment on a delinquent tax owed pursuant to this
14 part shall be applied as follows:

15 (1) First, to any interest due on the tax.

16 (2) Second, to any penalty imposed by this part.

17 ~~(3) Third to the balance, if any, of the tax due.~~

18 *(3) Third, the balance, if any, to the tax due.*

19 42011. Each producer shall prepare and file with the ~~department~~
20 *board* a return in the form prescribed by the ~~department~~ *board*
21 containing information as the ~~department~~ *board* deems necessary
22 or appropriate for the proper administration of this part. The return
23 shall be filed on or before the last day of the calendar month
24 following the calendar quarter to which it relates, together with a
25 remittance payable to the ~~department~~ *board* for the amount of tax
26 due for that period.

27 42012. The ~~department~~ *board* may prescribe those forms and
28 reporting requirements as necessary to implement the tax,
29 including, but not limited to, information regarding the location
30 of the well by county, the gross amount of oil produced, the
31 quantity sold and the selling price, the prevailing market price of
32 oil, and the amount of tax due.

33 42013. The ~~department~~ *board* shall administer and collect the
34 tax imposed by this part pursuant to the Fee Collection Procedures
35 Law (Part 30 (commencing with Section 55001) of Division 2).
36 For purposes of this part, the references in the Fee Collection
37 Procedures Law to "fee" shall include the tax imposed by this part,
38 to "feepayer" shall include a person required to pay the tax imposed
39 by this part, and to "~~board~~" shall mean the Department of
40 Conservation.

1 42014. The ~~department~~ *board* may prescribe, adopt, and enforce
2 emergency regulations relating to the administration and
3 enforcement of this part. Any emergency regulations prescribed,
4 adopted, or enforced pursuant to this section shall be adopted in
5 accordance with Chapter 3.5 (commencing with Section 11340)
6 of Part 1 of Division 3 of Title 2 of the Government Code, and for
7 purposes of that chapter, including Section 11349.6 of the
8 Government Code, the adoption of these regulations is an
9 emergency and shall be considered by the Office of Administrative
10 Law as necessary for the immediate preservation of the public
11 peace, health and safety, and general welfare. Notwithstanding
12 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
13 3 of Title 2 of the Government Code, including subdivision (e) of
14 Section 11346.1 of the Government Code, any emergency
15 regulations adopted pursuant to this section shall be filed with, but
16 not be repealed by, the Office of Administrative Law, and shall
17 remain in effect until revised by the director.

18 42015. The ~~department~~ *board* shall deposit all taxes, penalties,
19 and interest collected pursuant to this part in the General Fund.

20 42016. The provisions of this part are severable. If any
21 provision of this part or its application is held invalid, that
22 invalidity shall not affect other provisions or applications that can
23 be given effect without the invalid provision or application.

24 SEC. 2. No reimbursement is required by this act pursuant to
25 Section 6 of Article XIII B of the California Constitution because
26 the only costs that may be incurred by a local agency or school
27 district will be incurred because this act creates a new crime or
28 infraction, eliminates a crime or infraction, or changes the penalty
29 for a crime or infraction, within the meaning of Section 17556 of
30 the Government Code, or changes the definition of a crime within
31 the meaning of Section 6 of Article XIII B of the California
32 Constitution.

33 SEC. 3. This act provides for a tax levy within the meaning of
34 Article IV of the Constitution and shall go into immediate effect.